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NO. 86-282

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

DREXEL, BURNHAM LAMBERT, INC., CHARLES BEST AND GEORGE WILMOT,

Petitioners

vs.

REBECCA KING

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Drexel's Statement of the Issues does not give full consideration to the very distinct nature of the two issues presented, which are:

1. Whether the arbitration agreement at issue excludes 1934 Act claims by its terms, and
2. If it includes such claims, whether the "nonwaiver" provisions of the 1934 Act preclude arbitration of claims brought under it.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
REASONS FOR DENYING THE WRIT	5
CONCLUSION	8

TABLE OF AUTHORITIES

Trans-World Airlines, Inc. v. Thurston, 105 S.Ct. 613 (1985)	6

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Respondent, Rebecca King, respectfully requests that the Court deny the Petitioners' request for Writ of Certiorari for the following reasons:

STATEMENT OF THE CASE

King does not agree that the Fifth Circuit ruled on the contract interpretation issue that provides an independent ground for upholding the Trial Court's ruling in this case. (see, Petition p.6) That issue was not discussed.

The Petition also slights this issue by failing to quote the entire pertinent provision of the arbitration clause, which reads as follows:

> Any controversy arising out of or relating to my (our) account or transactions with you or me (us) or to this agreement or the breach thereof, shall be settled by arbitration . . .
>
> Certain decisions of the federal courts have held that, if a dispute involves a claim arising under the Securities Act of 1933 or the Securities Exchange Act of 1934, such arbitration clauses are void and

unenforceable as applied to such claims and accordingly clients cannot be compelled to arbitrate such a claim. In other contexts, the courts generally enforce arbitration clauses in clients' agreements. Therefore, nothing in this paragraph shall in any way constitute a waiver or limitation of any rights which I (we) may have under any Federal Securities Laws.

SUMMARY OF ARGUMENT

The disposition of this case may turn not on the "Question Presented" in the Petition, but on an issue of contract interpretation. That issue does not satisfy the criteria for review by certiorari of this Court.

ARGUMENT

It is not appropriate to grant the Writ of Certiorari in this case because its outcome may not turn on the "Question Presented" described in the Petition. It may instead turn on a question of contract interpretation important only to the particular parties of this case.

In the Order denying arbitration entered by the Trial Court, Judge Porter relied principally upon contract interpretation rather than statutory interpretation. In fact, his ruling is based on his finding that:

> the record in this case, therefore, indicates the parties did not intend to compel arbitration of the 1934 act claim . . .

A fair reading of the entire Order is that Judge Porter declined to rule on the more

abstract issue of the arbitrability of 1934 Act claims because he could base his ruling on the construction of the particular arbitration clause in question.

Although the Fifth Circuit did not discuss the contract interpretation issue, there is nothing to show that it disagreed with Judge Porter's finding. Naturally, the Respondent in this case will continue to urge that finding as a ground for upholding the decisions of the Trial Court and the Fifth Circuit. She is entitled to advance any ground in support of the judgment appealed from. Trans-World Airlines, Inc. v. Thurston, 105 S. Ct. 613, 620-621, n.14 (1985).

Regardless of any decision concerning the arbitrability of 1934 Act claims,

this case cannot be decided without also deciding the contract interpretation issue. That issue is ultimately dispositive of the case, but satisfies none of the criteria described in Rule 17.1 of this Court's Rules. For that reason, the Petition for Writ of Certiorari should be denied.

CONCLUSION

Because the contract interpretation issue may dispose of this case, the kind of issue suitable for a writ of certiorari is not clearly presented and the writ should be denied.

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